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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/816,619 | 04/02/2004 | Gregory J. Boss | YOR920040054US1 | 1056 |
| 59144 7590 09/11/2009 CAHN & SAMUELS, LLP 1100 17th STREET, NW SUITE 401 WASHINGTON, DC 20036 | | | | |
| EXAMINER | | | | |
| TRUONG, CAMQUY | | | | |
| ART UNIT | | PAPER NUMBER | | |
| 2195 | | | | |
| MAIL DATE | | DELIVERY MODE | | |
| 09/11/2009 | | PAPER | | |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

| | |
|--------------------------------------|------------------------------------|
| Application No. 10/816,619 | Applicant(s) BOSS ET AL. |
| Examiner CAMQUY TRUONG | Art Unit 2195 |

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 17 August 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: None.
Claim(s) objected to: None.
Claim(s) rejected: 1, 3-7, 10-15, 18-27 and 29-36.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/Meng-Ai An/
Supervisory Patent Examiner, Art Unit 2195

Continuation of 11, does NOT place the application in condition for allowance because: Applicant amendment filed on 1/29/08 has been considered but they are not persuasive:

Applicant argued in substance that:

- (1) Grumann does not explicitly teach applying a plurality of metrics including a job description and job level of a user.
- (2) Grumann does not explicitly teach a plurality of metrics including a job description.
- (3) Grumann does not explicitly teach a plurality of metrics including a job level of user.

Examiner respectfully disagreed with Applicant's remarks:

As to point (1), Grumann teaches applying a plurality of metrics including a job description (user selected a data protection task category, col. 27, lines 31-33) and job level of a user (performance levels of task, col. 30, lines 1-5 / the user selects a specific performance task from the performance task menu 205-3, col. 29, lines 61-67) to filter the collected performance data (applying the selected filter sub-task to the resources listed, resulting removal of resource that have more than 20 Gigabytes of free space, col. 30, lines 5-16).

As to point (2), Grumann teaches a plurality of metrics including a job description (the task categories 205 including data protection 205-1, administration 205-2, performance management 205-3, monitoring 205-4 and storage location 205-Q, col. 15, lines 4-17). It would have been obvious that Grumann teaches the task categories which including data protection 205-1, administration 205-2, performance management 205-3, monitoring 205-4 and storage location 205-Q which equal to task description.

As to point (3), the limitation " job level of user" does not clearly defined. Examiner interprets " job level of user " as " user selects a task associated with performance level of job and will be considered as such for examination purpose. Grumann teaches user selects a specific performance task from the performance task menu 205-3. This results in the production of resource information within output display area that indicated the performance levels, col. 29, line 65 - col. 30, line 5. Thus, Grumann teaches job level of user.